

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

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In re:	:	Case No. 14-51667-KMS
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Mississippi Phosphates Corporation et al., ¹	:	Chapter 11
	:	
Debtors.	:	(Jointly Administered)
	:	
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**MOTION TO COMPEL ASSUMPTION OR REJECTION OF EXECUTORY
CONTRACT, OR ALTERNATIVELY, TO PERMIT TERMINATION
OF CONTRACT, AND FOR OTHER RELIEF**

Blue Cross & Blue Shield of Mississippi, A Mutual Insurance Company (“BCBSMS”), hereby moves the Court for entry of an order compelling the Debtor Mississippi Phosphates Corporation (the “Debtor”) to make a prompt final decision on assumption or rejection of its Administrative Services Contract with BCBSMS, or alternatively, to permit termination of the Contract, and for other relief. In support thereof, BCBSMS respectfully represents:

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).
2. BCBSMS provides comprehensive health and wellness insurance coverage with a statewide network of providers and affordable premiums in all Mississippi counties.

¹ The Chapter 11 cases of the following affiliated debtors have been administratively consolidated pursuant to this Court’s Order of October 29, 2014 (Dkt. #62): Mississippi Phosphates Corporation, Case No. 14-51667-KMS; Ammonia Tank Subsidiary Inc., Case No. 14-51668-KMS; and Sulfuric Acid Tanks Subsidiary Inc., Case No. 14-51671-KMS.

3. The Debtor provides health insurance to its employees and their eligible dependents through a self-funded “employee welfare benefit plan,” as defined under Title I of the Employee Retirement Income Security Act of 1974, called Employee Health Protection Plan for MS Phosphates (the “GHP”).

4. BCBSMS, the Debtor, and the GHP entered into an Administrative Services Contract (the “Contract”) dated January 1, 2014. The term of the Contract is 12 months, running January 1, 2014, to December 31, 2014. The Contract was in effect on the petition date. Pursuant to the Contract, BCBSMS handles the administrative function involved with filing, processing, and payment of claims incurred under the GHP. BCBSMS receives and reviews health-insurance claims for the Debtor’s covered employees and their eligible dependents and pays claims for covered services. BCBSMS then seeks reimbursement from the GHP for claims paid, as well as for payment of administrative-services and access fees. A copy of the Contract is attached as Exhibit A.

5. Pursuant to § 541(b)(7)(B), any amount received by the Debtor from employees for payment as contributions to the GHP is not property of the estate.

6. The Contract is a service contract and thus an “executory contract” within the meaning of § 365 of the Bankruptcy Code.

7. BCBSMS continues to perform under the Contract.

8. Pursuant to the Interim Order Granting, in Part, Motion of the Debtors for Authority to Pay Certain Pre-Petition Employee Obligations (Dkt. #129), the Debtor has paid BCBSMS for all prepetition claims and fees relating to the Contract.

9. The Debtor has not sought or obtained Court approval to assume or reject the Contract.

10. In accordance with §§ 105(a) and 365(d)(2) of the Bankruptcy Code, BCBSMS submits that sufficient cause exists for the Court to enter an order compelling the Debtor to promptly determine whether to assume or reject the Contract. Although the Debtor has paid all prepetition claims and fees relating to the Contract, any delay in the Debtor's decision whether to assume or reject the Contract may still harm and unfairly prejudice BCBSMS in that if the Debtor fails to reimburse BCBSMS for payment of the GHP's claims, BCBSMS still may be obligated to pay the GHP's claims—which can be substantial—out of its own pocket.

11. Any order authorizing the Debtor to assume the Contract should include a provision permitting BCBSMS to, among other things, suspend all services and payment of all claims immediately upon any default by the Debtor or the GHP under the Contract.

12. In addition, any order authorizing the Debtor to assume the Contract should include a provision stating how the Debtor or the GHP will make payments to BCBSMS. Prepetition, the Debtor paid via ACH debit, in accordance with the Contract. Postpetition, the Debtor has made one payment via wire transfer.

13. Alternatively, BCBSMS requests that the stay under § 362 of the Bankruptcy Code be terminated in order that BCBSMS may terminate the Contract immediately, and that the Contract be abandoned from the bankruptcy estate pursuant to § 554 of the Bankruptcy Code.

14. A proposed order authorizing the Debtor to assume the Contract is attached as Exhibit B.

WHEREFORE, Blue Cross & Blue Shield of Mississippi, A Mutual Insurance Company, respectfully requests that the Court grant the relief requested herein, and such other and further relief this Court deems proper and just.

Dated: November 11, 2014

Respectfully submitted,

BLUE CROSS & BLUE SHIELD OF MISSISSIPPI,
A MUTUAL INSURANCE COMPANY

/s/ Andrew R. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing via the Court's CM/ECF filing system, which sent notice and a copy thereof to all counsel of record, including the following:

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Dated: November 11, 2014

/s/ Andrew R. Wilson